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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/696,013	10/28/2003	James P. Gardner JR.	00163.1306USC4	7056

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EXAMINER


TRAN, KHOI H

ART UNIT PAPER NUMBER

3651

DATE MAILED: 09/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/696,013	<b>Applicant(s)</b> GARDNER, JAMES P.	
	<b>Examiner</b> Khoi H Tran	<b>Art Unit</b> 3651	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 12 July 2004.
- 2a) ☐ This action is **FINAL**.      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-37 is/are pending in the application.
- 4a) Of the above claim(s) 7, 28 and 30-37 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6, 8-27 and 29 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

  
**KHOI H. TRAN**  
**PRIMARY EXAMINER**

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>01/04 &amp; 06/04</u> .   | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant election with traverse of group I, Species III, claims 1-6, 8-27, and 29 in the response filed on 07/12/2004 is acknowledged. The traversal is on the ground(s) that the invention would required common or non-burdensome search and do not comprise independent and distinct inventions. This is not found persuasive because while there may or may not be overlapping searches for each of the defined inventions, the divergent subject matter contained in the nonelected group(s) or invention(s) would warrant significant additional consideration if addressed on the merits. Additionally, the Examiner remains of the position that the inventions as defined in the previous restriction requirement comprise distinct and independent inventions as discussed in the last Office Action.

The requirement is still deemed proper and hereby made Final.

### ***Double Patenting***

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. Claims 1-5, 8-27, and 29 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-12 of U.S. Patent No. 6,377,868. Although the conflicting claims are not identical, they are not patentably distinct from each other because It would have been obvious for a person with ordinary skill in the art, at the time the invention was made, to have broadened or modified the claims in US 6,377,868 to anticipates the broader claimed invention.

4. Claims 1-5, 8-27, and 29 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-15 and 24-34 of U.S. Patent No. 6,697,706. Although the conflicting claims are not identical, they are not patentably distinct from each other because It would have been obvious for a person with ordinary skill in the art, at the time the invention was made, to have broadened or modified the claims in US 6,697,706 to anticipates the broader claimed invention.

***Claim Rejections - 35 USC § 112***

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 6 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. "a client computer" lacks positive identification. It is not distinct whether the "client computer" is in fact part of the claimed invention. The 'client computer', therefore, should be positively identify as being part of the claimed system.

***Claim Rejections - 35 USC § 102***

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 1-6, 8-27, and 29 are rejected under 35 U.S.C. 102(b) as being anticipated by Koropitzer et al. 5,694,323.

Koropitzer '323 discloses a data processing system for monitoring operations associated with a cleaning system at a first physical location (Figures 1-2). The cleaning system corresponds to a first customer account identified by an account identifier (at least Figure 5). The system comprises a monitor module for detecting information originating at the first physical location (Figures 1-5). The system comprises a database communicatively connected to the monitor module and storing the account identifier in association with the information detected at the first physical location. The database further stores corporate data (at least Figures 5 and 9) in association with the information detected at the first physical location and the account identifier. The system comprises an analysis application for analyzing the information detected at the first physical location in relation with the corporate data to characterize operations associated with the cleaning system. For example, the information collected at Koropitzer '323 monitoring location is used to describe or characterize the status of machine operation at a given time or the change in status of machine operation over a period of time. For example, the information collected at Koropitzer '323 monitoring

location is used to describe or characterize the discrepancy of income for each machine at the first location.

In regards to claims 2 and 3, Koropitzer '323 system comprises plurality of sensors for sensing operating conditions at the first physical location including: machine operations, detergent dispensing, HVAC system and lights...

In regards to claim 4, Koropitzer '323 monitor module comprises a detecting device located at a location remote from the first physical location.

In regards to claims 8-10, 14, and 21, Koropitzer '323 system comprises an analysis application for analyzing the information detected at the first physical location and the corporate data against a target parameter specifying a desired characteristic associated with one or more operations of the cleaning system (i.e. collected income verses acquired income). The analysis application also identifies a situation wherein the desired data characteristic is not met (i.e. discrepancy report between collected and acquired incomes, Figures 20 and 22).

In regards to claims 6 and 11, Koropitzer '323 system comprises client computer 153 that runs the analysis application in order to provide to any person including field service operators a user interface through which the operations of the cleaning system may be monitored from a remote site from the first physical location.

In regards to claim 12, Koropitzer '323 analysis application provides the field service operators with an ability to control operations of the cleaning system from the remote site.

In regards to claims 13 and 15, Koropitzer 323 discrepancy report is a form of alarm command.

In regards to claim 16, Koropitzer '323 system also monitors water temperature for each machine at the first location.

In regards to claim 17, Koropitzer '323 system also monitors the amount of detergent being dispensed at the dispensing machine.

In regards to claims 18-20, Koropitzer 323 system provides various real-time or historical reports related to operations associated with the cleaning system.

In regards to claims 22 and 23, Koropitzer '323 system also monitors and controls the HVAC and lighting systems for the cleaning system.

In regards to claim 24, Koropitzer '323 system comprises client computer 153 that runs the analysis application in order to provide to any person including field service operators a user interface through which the operations of the cleaning system may be monitored from a remote site from the first physical location.

In regards to claim 25, Koropitzer '323 analysis application provides the field service operators with an ability to control operations of the cleaning system from the remote site.

In regards to claims 26 and 27, Koropitzer 323 discrepancy report is a form of alarm command.

In regards to claim 29, Koropitzer '393 monitoring system is applicable in a warewash machine system.

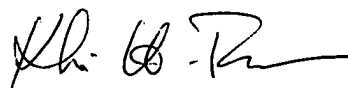
***Conclusion***

9. Additional references made of record and not relied upon are considered to be of interest to applicant's disclosure: see attached USPTO Form 892.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Khoi H Tran whose telephone number is (703) 308-1113. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christopher Ellis can be reached on (703) 308-1113. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Khoi H Tran  
Primary Examiner  
Art Unit 3651